

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY JE D.C.

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THOMAS W. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TENNESSEE

BECKY CAMPBELL, as Power of  
Attorney of ROBERT CAMPBELL,  
an incapacitated person,

Plaintiff,

vs.

No. 05-2589 M1/P

MANOR CARE, INC. f/k/a HCR  
MANOR CARE, INC.; HEALTH CARE  
RETIREMENT CORPORATION; HEALTH  
CARE AND RETIREMENT  
CORPORATION OF AMERICA d/b/a  
HEARTLAND OF MEMPHIS (n/k/a  
ATRIUM OF MEMPHIS); ORION  
MEMPHIS, LLC d/b/a ATRIUM OF  
MEMPHIS; ORION CARE SERVICES,  
LLC; ESSEX HEALTHCARE  
CORPORATION; MICHAEL MCCANN,  
in his capacity as  
Administrator of Atrium of  
Memphis; CRYSTAL MARCH, in her  
capacity as Administrator of  
Atrium of Memphis; ROBERT  
CRAFT, in his capacity as  
Administrator of Atrium of  
Memphis; and JOHN DOES 1  
through 10,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO STAY REQUIREMENT TO RESPOND  
TO PLAINTIFF'S COMPLAINT PENDING DETERMINATION OF MOTION TO  
REMAND

Before the court is a Motion to Stay Requirement to Respond to

Plaintiff's Complaint Pending Determination of Motion to Remand, filed by defendants Orion Memphis, LLC d/b/a Atrium of Memphis, Orion Care Services LLC, Essex Healthcare Corporation, Crystal March, and Robert Craft (collectively "Orion Defendants") on September 20, 2005 (dkt #16). Plaintiff filed her response on October 5, 2005. For the reasons below, the motion is DENIED.

### **I. BACKGROUND**

Since 2003, Robert Campbell has resided at Atrium of Memphis ("Atrium"), a nursing facility located in Memphis, Tennessee. According to Campbell, while residing at Atrium, he has suffered from dehydration, urinary tract infections, sepsis, multiple pressure ulcers, malnutrition, and contractures as a result of the defendants' negligence. On July 14, 2005, Campbell, by and through Becky Campbell, filed a complaint against the defendants in the Circuit Court of Tennessee, alleging negligence and violations of the Tennessee Adult Protection Act, Tenn. Code Ann. § 71-6-101 et seq. On August 15, 2005, the defendants removed this case to federal court. On September 2, this court granted the Orion Defendants' motion for extension of time to respond to the complaint (until September 21, 2005). On September 7, 2005, Campbell filed a motion to remand this case back to state court. In the present motion, filed on September 20, 2005, the Orion Defendants ask the court to stay the requirement that they file a response to Campbell's complaint until the trial court has ruled on

Campbell's motion to remand.

## II. ANALYSIS

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis et al. v. North American Co., 299 U.S. 248, 254 (1936). The decision to stay proceedings is within the court's discretion. See Nichols v. Baptist Memorial Hosp., No. 02-2561, 2004 WL 2905406, at \*2 (W.D. Tenn. April 2, 2004) (unpublished). "In the exercise of that discretion, the Court must weigh and maintain an even balance among competing benefits and hardships." Wilson v. Unum Life Ins. Co. of America, No. 03-0070, 2004 U.S. Dist. LEXIS 24454, at \*9 (M.D. Tenn. Jan. 22, 2004) (unpublished) (citing Landis, 299 U.S. at 258-59).

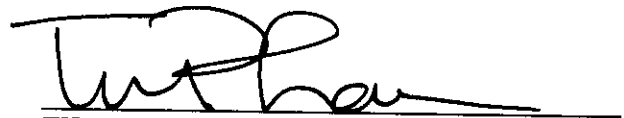
The court concludes that the Orion Defendants have not sufficiently demonstrated that a stay is appropriate. A stay of the requirement of serving a responsive pleading would not promote judicial economy, and proceeding with this litigation while the motion to remand is pending would not, as the Orion Defendants contend, be a waste of the court's and parties' time and resources. Even if the plaintiff's motion to remand is granted, the defendants would still have to respond to the complaint and engage in discovery in state court. Defendants have already been given an extension of time to respond to the complaint by the court, and any

further delays may prejudice the plaintiff. There is also no indication that the defendants would be injured absent a stay. See Landis, 299 U.S. at 255.

### III. CONCLUSION

For the reasons above, Defendants' motion to stay is DENIED. The Orion Defendants are hereby ORDERED to respond to the complaint within eleven (11) days from the date of this order.

IT IS SO ORDERED.



TU M. PHAM  
United States Magistrate Judge

October 19, 2005  
Date



## Notice of Distribution

This notice confirms a copy of the document docketed as number 27 in case 2:05-CV-02589 was distributed by fax, mail, or direct printing on October 19, 2005 to the parties listed.

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Honorable Jon McCalla  
US DISTRICT COURT